

BEFORE THE  
FEDERAL MARITIME COMMISSION

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Docket No. 14-05

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Huntington International, Inc.  
JC Horizon Ltd. and Judy Lee-Possible Violations of  
Sections 10(a)(1) and 19 of the Shipping Act of 1984

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ANSWER TO ORDER OF INVESTIGATION AND HEARING

Respondent JC Horizon Ltd. ("Respondent" or "JC Horizon") by and through its undersigned counsel, hereby respectfully answers the above-captioned Order of Investigation and Hearing ("Order" or "Order of Investigation"). To the extent not specifically admitted herein, all allegations of the Order are denied, including those in the preamble and unnumbered paragraphs. Further the section headings contained herein are included only for purposes of clarity and organization, and the Respondent does not admit, but rather hereby specifically denies, any factual or legal allegations in the headings used in the Order and repeated below. Respondent also sets forth below its counter-claims against the Federal Maritime Commission ("FMC" or "Commission") and seeks compensation for its legal fees, costs and expenses as allowed under the Equal Access to Justice Act, 5 U.S.C. 504 and 28 U.S.C. 2412.

**Preamble**

Respondent believes that the Order is fatally flawed as the Order, as stated in the Preamble of the Order, is only "based on information provided to it [the FMC Bureau of Enforcement ('BOE')"]. No Order should have been issued, if at all, until a full investigation had been conducted. See, Possible Malpractices in the Trans-Atlantic Trades, 24 SRR 41 (FMC 1987) (Non adjudicatory investigation ordered to see if there is sufficient evidence to either enter into informal settlements or issue a formal investigation),. This lack of a complete investigation, with the misstatements of both fact and law, permeates the whole of the Order. Nevertheless, since the Administrative Law Judge, in her Initial Order dated June 6, 2014, requires that Respondent answer the Order in its entirety or at its peril be deemed to have admitted the allegations stated therein, Respondent will answer the Order subject to its objections here and as otherwise stated in this Answer.

As to the preamble, Respondent lacks information sufficient to form a belief as to the statements contained in the preamble as to Huntington International, Inc. ("Huntington") and therefore denies each and every one of these allegations. Respondent further denies that it has violated any part of the Shipping Act of 1984, or that Judy Lee was its owner during the relevant periods to the Order.

**Statement of Facts Constituting Basis of Violations**

Paragraphs numbered 1 through 9

These paragraphs pertain exclusively to Huntington. Respondent lacks knowledge or information sufficient to form a belief as to these statements and therefore denies each and every allegation contained in Paragraphs 1-9.

Paragraph 10

Respondent admits the allegations of Paragraph 10.

Paragraph 11

Respondent admits the allegations of Paragraph 11.

Paragraph 12

Respondent admits the allegations of Paragraph 12.

Paragraph 13

Respondent denies that Judy Lee was a shareholder, much less the sole shareholder, during the times relevant to the Order. Respondent admits that Judy Lee was President and CEO.

Paragraphs 14-19

Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraphs 14-19 and therefore denies each and every allegation contained in those paragraphs.

Paragraph 20

Respondent lacks knowledge or information of the records in the Commission's SERVCON database, and therefore denies each and every allegation contained in Paragraph 20.

#### Paragraphs 21-24

These paragraphs pertain to a company named Zhong Bing International. Respondent lacks knowledge or information to form a belief as to the allegations of Paragraphs 21-24 and therefore denies each and every allegation contained in those paragraphs.

#### **Unlicensed Activities of Huntington International, Inc.**

#### Paragraphs 25-30

These paragraphs pertain exclusively to Respondent Huntington. Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraphs 25-30 and therefore denies each and every allegation contained in those paragraphs.

#### Paragraph 31

Respondent admits the allegations of Paragraph 31.

#### Paragraph 32

Respondent admits the allegations of Paragraph 32.

#### Paragraph 33

Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 33 and therefore denies each and every allegation contained in this paragraph.

#### **Unlawful Collection of Forwarder Compensation by Huntington International, Inc.**

#### Paragraph 34

This allegation is denied. On its face Attachment B states it involves not only alleged shipments by JC Horizon but an entirely separate corporation, JC Horizon Trading Ltd., which is not a respondent in this proceeding.

#### Paragraph 35

Respondent denies each and every allegation. Judy Lee did not own JC Horizon during the period of the alleged shipments contained in Attachment B.

Paragraph 36

Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 36 and therefore denies each and every allegation contained in this paragraph.

Paragraph 37

Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 37 and therefore denies each and every allegation contained in this paragraph.

Paragraph 38

Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 38 and therefore denies each and every allegation contained in this paragraph.

Paragraph 39

Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 39 and therefore denies each and every allegation contained in this paragraph.

Paragraph 40

Respondent lacks sufficient knowledge or information to form a belief as to the allegations of Paragraph 40 and therefore denies the allegations contained in this paragraph. Respondent further denies that Judy Lee was its owner during the period of the shipments subject to the Order.

Paragraph 41

Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 41 and therefore denies each and every allegation contained in this paragraph. Respondent denies that Judy Lee was its owner during the period of the shipments subject to the Order.

Paragraph 42

Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 42 and therefore denies each and every allegation contained in this paragraph. Respondent further denies that Judy Lee was its owner during the period of the shipments subject to the Order.

Paragraph 43

Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 43 and therefore denies each and every allegation contained in this paragraph.

Paragraph 44

Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 44 and therefore denies each and every allegation contained in this paragraph.

**Unlawful Sharing of Forwarder Compensation by Huntington International, Inc.**

Paragraph 45

Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 45 and therefore denies each and every allegation contained in this paragraph.

Paragraph 46

Respondent admits that it has received certain loans, not payments, from Huntington during the period noted. Some of those loans have been repaid and some are still outstanding as allowed under the loan agreements in place. Respondent lacks knowledge or information sufficient to form a belief as to the other allegations of Paragraph 46 and therefore denies each and every one of these allegations.

Paragraph 47

Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 47 and therefore each and every allegation contained in this paragraph. Respondent further states that it believes that in normal business practice loans may be derived from any source of revenues of a company, and that if a company wants to lend money which is in whole or in part derived from freight forwarder commissions, that no law bars such use of freight forwarder commissions to make loans.

Paragraph 48

Respondent denies that any payments have been received from Huntington but that instead it received loans, some of which have been repaid. Respondent lacks

knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 48 as to JC Horizon Trading and Judy Lee and therefore denies each and every one of those allegations.

**Obtaining Transportation at Less Than Applicable Rates by JC Horizon and Judy Lee**

**Paragraph 49**

Respondent admits that it is shown as the shipper on certain of the shipments identified in Attachments A and B and was responsible for and paid, the ocean transportation charges. Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 49 as to JC Horizon Trading Ltd. and therefore denies each and every allegation related thereto.

**Paragraph 50**

Respondent admits that Huntington performed freight forwarder services for JC Horizon. Respondent lacks knowledge and information sufficient to form a belief as to the other allegations of Paragraph 50 and therefore denies each and every other allegation contained in this paragraph.

**Paragraph 51**

Respondent admits that during the period indicated in Attachment C to the Order, that it received loans from Huntington in the amounts attributed to it in Attachment C. Some of those loans have been repaid and others are outstanding pursuant to the loan agreements in place. Respondent denies each and every other allegation in Paragraph 51.

**Paragraph 52**

Respondent lacks sufficient knowledge to form a belief as to the allegations of Paragraph 52 and therefore denies the allegations contained in this paragraph.

**Paragraph 53**

Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 53 and therefore denies each and every allegation contained in this paragraph.

#### Paragraph 54

Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 54 and therefore denies each and every allegation contained in this paragraph.

#### Paragraph 55

Respondent lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 55 and therefore denies each and every allegation contained in this paragraph.

#### Paragraph 56

Respondent denies that during the period covered by the Order that Judy Lee owned Respondent. As to the remaining allegations in Paragraph 56, Respondent lacks knowledge or information sufficient to form a belief as to the allegations and therefore denies each and every other allegation.

#### Paragraph 57

Respondent lacks sufficient knowledge or information to form a belief as to the allegations of Paragraph 57 and therefore denies the allegations contained in this paragraph.

### **The Commission's Jurisdiction and Requirements of Law**

#### Paragraphs 58-65

The Shipping Act of 1984 as amended and the Commission's regulations speak for themselves. To the extent that anything said in these paragraphs deviates or changes the language and scope of the statute or regulations, Respondent denies those allegations.

### **Violations of the Shipping Act and Commission Regulations**

#### Paragraphs 66-69

Respondent specifically incorporates its prior answers to the preamble and paragraphs 1-65 of the Order as responses to Paragraphs 66-69 as if fully set forth herein. To the extent that the allegations pertain to Respondent, Respondent denies them as Respondent had no knowing and willful intent to attempt or to violate either the Shipping Act or the Commission regulations and used no unjust or unfair means to obtain ocean transportation at less than the rates and charges in tariffs



and service contracts. Respondent paid all applicable rates and charges for every shipment made. To the extent that the allegations pertain solely to respondents other than Respondent JC Horizon, JC Horizon lacks sufficient knowledge to form a belief as to the allegations and therefore would deny them.

### **Order**

The Order section sets forth the various steps to be taken in the proceeding, names the respondent parties, appoints BOE as an additional party, and assigns an administrative law judge to preside in the proceeding. It does not need to be admitted or denied. Respondent agrees to utilize the alternative dispute resolution procedures and the Commission's dispute resolution specialist.

### **Attachments A, B and C**

Respondent incorporates herein its responses in the specific paragraphs to the contentions set forth in Attachments A, B and C as if specifically set forth herein. In addition, Respondent does not have specific knowledge of what freight forwarder commissions may or may not have been paid to Huntington and because of that lack of knowledge specifically denies these allegations.

### **Affirmative Defenses**

Respondent asserts the following affirmative defenses to the Order. Respondent does not concede that it has the burden of proof as to any of the defenses.

1. The Order has failed to state a claim upon which violations of the Shipping Act of 1984 as amended may be found against Respondent.
2. The conduct of Respondent in accepting loans from Huntington has been previously determined by the FMC to be lawful conduct.

### **COUNTERCLAIM**

#### **Parties**

1. Counter-Complainant JC Horizon Ltd. ("JC Horizon" or "Counter-Complainant") is a California corporation that exports scrap metal, waste paper and plastic scrap from the United States.



2. The Federal Maritime Commission ("FMC" or "Commission") is a Federal independent regulatory agency charged with administering the Shipping Act of 1984, as amended ("Shipping Act").

### Facts

3. On June 4, 2014, the FMC served on Counter-Complainant an Order of Investigation and Hearing ("Order") alleging violations of certain sections of the Shipping Act. The FMC alleges as to Counter-Complainant that it violated Section 10(a)(1) of the Shipping Act. Section 10(a)(1), which by statute and by the FMC's own words in paragraph 58 of the Order, prohibits any person from *knowingly and willfully*, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other *unjust or unfair* device or means, obtaining or attempting to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable. [Italics supplied.]

4. The Commission's factual allegations, set forth in paragraphs 1-57 of the Order, on the basis of "Information provided to the Bureau of Enforcement", demonstrate on their face that the FMC does not have a case against Counter-Complainant. The FMC fails to plead that Counter-Complainant knowingly and willfully attempted to or obtained ocean transportation at less than the rates and charges in a tariff or service contract. A knowing and willful violation is a requirement to be found in violation of Section 10(a)(1).

5. In paragraphs 66-69 of the Order, that set forth the FMC's contentions of alleged violations of the Shipping Act, the FMC fails to plead in paragraph 69 of the Order, the one paragraph devoted to alleged violations by Counter-Complainant, that Counter-Complainant used an unjust or unfair device to obtain lower shipping rates than those set forth in tariffs or service contracts with the carriers. Use of an unjust or unfair device is a requirement to be found in violation of Section 10(a)(1).

6. Even assuming, *arguendo*, that the Order properly pleads the relevant factors for Counter-Complainant to be found in violation of Section 10(a)(1) of the Shipping Act, no such facts exist for a violation to be found.

8. While the Order uses the charade of calling the loans to Counter-Complainant "payments", the BOE was provided with information and knows or should have known that the money transferred to Counter-Complainant was in the form of documented loans, some of which have been repaid.

9. The FMC is also aware that there is precedent, binding on the BOE, that loans from a licensed freight forwarder to a shipper on which shipments the freight forwarder is collecting freight forwarder compensation, even when an employee of the shipper or its family is also an employee of the freight forwarder, is not a

violation of the shipping laws. See, York Forwarding Co., 12 SRR 939 (FMC 1972).

10. The FMC, as a Federal agency, is subject to the Equal Access to Justice Act ("EAJA"), 5 U.S.C. 504 and 28 U.S.C. 2412. The FMC acknowledges that it is subject to the EAJA by including the EAJA and its obligation for attorney's fees, costs, and expenses of the prevailing party in Part 502 of the Commission's regulations.

11. The FMC is liable to Counter-Complainant for its attorneys' fees up to \$125 per hour, its costs and expenses because (a) its Order prefaces all of the allegations as being on the basis of "information provided", and (b) it is unable to prove that its Order is substantially justified. Because the Order is insufficiently plead under the Shipping Act and because it is misleading and fails to state the proper facts, Counter-Complainant is the prevailing party on the Order and payment to Counter-Complainant should be made. A petition seeking the payment due will be filed when the Order is dismissed as to Counter-Complainant.

### **Prayer for Relief**

12. WHEREFORE, Counter-Complainant prays that the FMC be required to answer the charges herein; that after due hearing, an order be made dismissing this Order, and that the FMC be required to pay Counter-Complainant by way of attorneys fees, costs and expenses, for failing to conduct a substantially justified investigation. Respondent requests an oral hearing in this matter in Los Angeles, CA.

Respectfully submitted,

*Paul D. Coleman*

Neal M. Mayer  
Paul D. Coleman

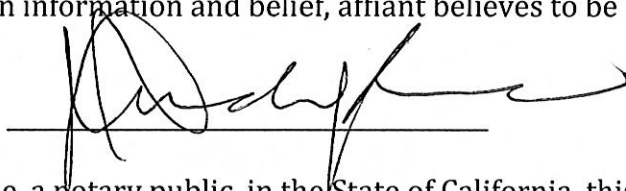
Hoppel, Mayer & Coleman  
1050 Connecticut Avenue, NW  
10<sup>th</sup> Floor  
Washington, DC 20036  
Attorneys for:  
JC Horizon Ltd.

July 7, 2014

### **VERIFICATION**

I, Judy Lee, the President of JC Horizon Ltd., have read the foregoing Answer to the Order of Investigation and Hearing and I verify that the facts stated therein either

(a) upon information known by me or received from the employees of JC Horizon Ltd. or (b) which are stated to be on information and belief, affiant believes to be true and correct.



18<sup>th</sup> day of July, 2014. Subscribed and sworn to before me, a notary public, in the State of California, this

Please See  
Attached for  
Notary Acknow.

# CALIFORNIA JURAT WITH AFFIANT STATEMENT

- ☐ See Attached Document (Notary to cross out lines 1-6 below)  
☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this

18 day of July, 2014, by  
Date Month Year

(1) Judy Lee  
Name of Signer

proved to me on the basis of satisfactory evidence  
to be the person who appeared before me (.) (.)

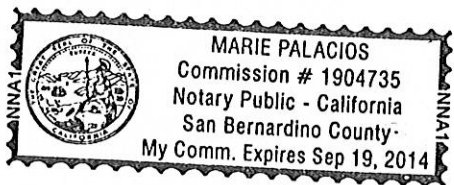
(and

(2) \_\_\_\_\_  
Name of Signer

proved to me on the basis of satisfactory evidence  
to be the person who appeared before me.)

Signature

Signature of Notary Public



Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove  
valuable to persons relying on the document and could prevent  
fraudulent removal and reattachment of this form to another document.

### Further Description of Any Attached Document

Title or Type of Document: Before the Federal Maritime Commission

Document Date: 7/1/14 Number of Pages: 12

Signer(s) Other Than Named Above: none

RIGHT THUMBPRINT  
OF SIGNER #1

Top of thumb here

RIGHT THUMBPRINT  
OF SIGNER #2

Top of thumb here

Certificate of Service

I, Paul D. Coleman, hereby certify that on this 7<sup>th</sup> day of July, 2014 I have served by electronic mail the foregoing document on the Secretary of the Federal Maritime Commission and on the FMC Bureau of Enforcement, with a courtesy copy to the Office of Administrative Law Judges. I further certify that the requisite original and five paper copies are being delivered by courier or by first class mail, postage prepaid, to the Office of the Secretary and to the BOE.

*Paul D. Coleman*